

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI PET BREEDERS
ASSOCIATION,

Petitioner,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 12-0018 RS

DECISION

The Missouri Pet Breeders Association (“MPBA”) is not entitled to a sales/use tax exemption because it is not a charitable, civic or service organization.

Procedure

MPBA filed a complaint on January 5, 2012, challenging the Director of Revenue’s decision denying its application for an exemption. On January 30, 2012, the Director filed his answer. We held a hearing on May 17, 2012. Deirdre O’Donnell represented MPBA. Spencer Martin represented the Director. This case became ready for our consideration on October 15, 2012, the date the last written argument was filed.

Findings of Fact

1. MPBA is a Missouri nonprofit corporation.
2. MPBA’s main focus, however, is lobbying.

3. MPBA has been recognized by the IRS as an organization that is exempt from tax under § 501(c)(6) of the Internal Revenue Code (“IRC”).

4. The objectives of the MPBA are to develop a viable pet breeding industry in Missouri, to advance Missouri pet production and marketing, to promote awareness of legislation affecting the pet industry and defeat unfavorable legislation, to present a positive image to the public, and to produce a directory of members.

5. MPBA currently has “just under 500” members.”¹

6. Barb York is the president of MPBA. She spends 75 percent of her time as president meeting with state legislators, the governor, USDA, and the Missouri Department of Agriculture.

7. In those meetings, York discusses the pet breeding industry, the good job that breeders are doing, and the education breeders receive.

8. In those meetings, York is “attempting to . . . portray the Missouri pet breeding industry in a positive light.”²

9. York discusses pending legislation with lawmakers. York informs legislators about how a pending bill would affect the industry.

10. York claims to need to speak with legislators because they, in her opinion, “do not know the industry.”³

11. When the General Assembly is considering a bill that York considers detrimental to MPBA or the pet breeding industry, York encourages members of MPBA to contact their legislators.

¹ Tr. 11.

² Tr. 45.

³ Tr. 64.

12. York spent time campaigning against Proposition B, the “puppy mill” initiative that was put to the voters in 2010. York also mobilized MPBA’s membership to write letters, make telephone calls, and create grassroots support against Proposition B.

13. York met with high powered elected statewide officials to complain about Proposition B after it had passed.⁴

14. In that meeting, York supported a different approach than Proposition B.

15. York was the “point person” in Missouri for advocating changes to Proposition B.⁵

16. Karen Strange and Dale Amick, members of MPBA, are both registered lobbyists and lobby on behalf of MPBA. They both volunteer their time and are paid by MPBA.

17. MPBA has an auction at its yearly seminar that raises between \$6,000 and \$12,000.

18. Yearly dues for members are \$25.

19. Membership in MPBA is restricted generally to breeders, vendors, and others having “some connection” to the pet breeding industry.⁶

20. As a requirement for continuing membership, a breeder must be in good standing with the State of Missouri.

21. The MPBA’s membership directory is not available to the general public and is only distributed to members and veterinarians.

22. MPBA gives four \$500 scholarships per year. These scholarships go to members or children or grandchildren of members.

23. MPBA puts on a two-day seminar every year in March that is open to the public. The public may come free of charge.

⁴ Proposition B passed in the 2010 election and was duly enacted as § 273.345 RSMo 2010 Supp. It was repealed by 2011 S.B. 161, § A. Statutory citations are to the 2000 version of the Revised Statutes of Missouri unless otherwise indicated.

⁵ Tr. 75-76.

⁶ Tr. 42.

24. Generally, only pet breeders or people associated with the pet breeding industry attend the seminar. Family, friends, and neighbors of pet breeders also attend.
25. Vendors pay MPBA a fee to set up a booth at the seminar. Part of that fee goes to MPBA; the remainder goes to cover the cost of the venue rental.
26. MPBA publishes a quarterly newsletter. MBPA charges for advertising in that newsletter. MPBA makes a nominal profit on the newsletter.
27. The newsletter is generally sent only to members of MPBA.
28. One copy of the newsletter was sent to all licensed breeders in the state of Missouri along with the agenda for MPBA's 2012 seminar.
29. MPBA buys microchips in volume. MPBA then resells those microchips to breeders so that breeders can microchip puppies.
30. MPBA marks up the prices to cover costs for shipping and handling and to pay a commission to the person responsible for the sales. That person is a member of MPBA.
31. MPBA applied to renew its sales/use tax exemption in 2011.⁷
32. The Director denied MPBA's application on November 3, 2011.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.⁸ MPBA bears the burden of proving that it is entitled to the state sales/use tax exemption.⁹ An exemption is allowed only upon clear and unequivocal proof, and doubts are resolved against the party claiming it.¹⁰ Exemptions are interpreted to give effect to the General Assembly's intent, using the plain and ordinary meaning of the words.¹¹ Although tax exemptions are to be strictly construed against the taxpayer, that requirement should not nullify the legislative purpose in

⁷ The parties did not specify when MPBA filed its application.

⁸Section 621.050.1.

⁹*Branson Properties USA v. Director of Revenue*, 110 S.W.3d 824, 825-26 (Mo. 2003); §§ 136.300.1 and 621.050.2.

¹⁰*Id.*

¹¹*Id.*

making the exemption available.¹² The Supreme Court of Missouri has explained the rationale for tax exemptions as follows:

Exemptions from the class to be taxed must be founded upon some rational basis. The use of exemption provisos in such legislation to limit the boundaries of the class established must rest upon some sound reason of public policy. To warrant the taxing of one object or person and the exemption of another object or person within the same natural class, **the exemption must be founded upon a reason public in nature** which in a reasonable degree, at least, would justify restricting the natural class. Exemptions from taxation are a renunciation of sovereignty, must be strictly construed and generally are sustained only upon the grounds of public policy. **They should serve a public, as distinguished from a private, interest.** Such is the basis of equal and uniform taxation.[¹³]

Each claim for exemption depends on the particular facts of each case.¹⁴

MPBA argues that the Director previously granted it a sales tax exemption. However, that does not establish MPBA's entitlement to an exemption. The only issue before us is MPBA's current application. Further, the fact that MPBA is exempt under IRC § 501(c)(6) does not establish that it is also exempt under § 144.030.2 because the statutory language is different.¹⁵ IRC § 501(c)(6) establishes tax-exempt status for:

Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

As we will see, § 144.030.2(19) and (20) contain very different statutory language from that of § 501(c)(6).

MPBA's § 501(c)(6) designation cuts against its argument that it is a charitable or civic group. All of the organizations mentioned in § 501(c)(6) exist to promote specific businesses or businesses in a specific geographic locale. By filing under § 501(c)(6), MPBA implicitly admits

¹²*State ex rel. Ozark Lead Co. v. Goldberg*, 610 S.W.2d 954, 957 (Mo. 1981).

¹³*State ex rel. Transport Mfg. & Equip. Co. v. Bates*, 224 S.W.2d 996, 1009 (Mo. banc 1949) (emphasis added).

¹⁴*Frisco Employees' Hosp. Ass'n v. State Tax Comm'n*, 381 S.W.2d 772, 774 (Mo. 1964).

¹⁵*St. Louis Labor Council, AFL-CIO v. Director of Revenue*, No. RS-84-1762 (Mo. Admin. Hearing Comm'n, Jan. 24, 1986).

that it is a business league—and that the thrust of its activities is to promote the business of pet breeding. That fact is fatal to MPBA’s argument that it is a charitable or civic organization.

MPBA is not a charitable organization.

MPBA argues that it is exempt as a charitable organization under § 144.030.2(19),¹⁶ which provides a sales/use tax exemption for:

[a]ll sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities[.]

In *Salvation Army v. Hoehn*,¹⁷ the Missouri Supreme Court set forth a test that a taxpayer must meet to show its charitable character:

Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. * * * A charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and **as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.**

(Emphasis added).¹⁸

¹⁶ Cum. Supp. 2010.

¹⁷ 188 S.W.2d 826, 830 (Mo. 1945).

¹⁸ Although *Salvation Army v. Hoehn* involved a property tax exemption, the Missouri Supreme Court has relied on property tax cases in construing § 144.030.2(19). *St. John’s Medical Center v. Spradling*, 510 S.W.2d 417, 418-19 (Mo. 1974); *Director of Revenue v. St. John’s Regional Health Center*, 779 S.W.2d 588, 591 (Mo. banc 1989).

In *St. John's Medical Center v. Spradling*,¹⁹ the court applied the exemption to food services and gift shops in not-for-profit hospitals.²⁰ The food services included service of food to patients and in cafeterias, coffee shops, or dining rooms accessible to personnel and visitors at the hospitals. The gift shops were operated through volunteer auxiliary organizations. The court stated that the hospitals had a large income from patients who paid for their care; however, their purpose was not to make a profit, but to devote any income to their charitable purposes of operating hospitals for the benefit of all who came through their doors, whether as paying or indigent patients.²¹ The court further stated that even though one of the gift shops was operated by an auxiliary that was separately incorporated, the gift shop was not required to collect sales tax because the auxiliary was a "benevolent and charitable organization" that not only operated the gift shop and gave its profits to the hospital, but also raised money by donations to buy equipment for the hospital.²²

In the only other reported case in Missouri involving the charitable exemption for sales/use tax, *Director of Revenue v. St. John's Regional Health Center*,²³ there was no dispute that the hospital was a charitable organization, but the issue in that case was whether its fitness center qualified for the exemption. The court held that the fitness center qualified for the exemption as part of the educational functions and activities of the charitable organization.²⁴

MPBA charges dues for its current members, and it restricts its admissions to those who pay dues. MPBA does not restrict its admissions to a classification that involuntarily affects a

¹⁹ 510 S.W.2d 417 (Mo. 1974).

²⁰ The exemption was then codified at section 144.040.1, RSMo, and exempted "all sales made by or to religious and charitable organizations or institutions . . . in their religious, charitable or educational functions or activities."

²¹ *Id.* at 419.

²² *Id.*

²³ 779 S.W.2d 588 (Mo. banc 1989).

²⁴ *Id.* at 591.

group of people, such as blindness. MPBA is a private organization that promotes pet breeding and actively lobbies on behalf of the pet breeding industry.

Similarly, the fact that MPBA performs an educational function to some extent does not transform its private purposes into a public function. MPBA performs an educational function for its members in its yearly seminar and in its newsletter. The main focus of MPBA, however, is lobbying. The stated objectives for the organization are to develop a viable pet breeding industry in Missouri, to advance Missouri pet production and marketing, to promote awareness of legislation affecting the pet industry and defeat unfavorable legislation, to present a positive image to the public, and to produce a directory of members. None of those goals is educational. Instead, they serve to promote the pet breeding industry. We stress that York's activities in speaking with state and federal officials are not "education." Her activities are lobbying and developing relationships with officials in order to further MPBA's agenda.

Even if MPBA were a charitable organization, the sales tax exemption would only apply to sales made in its "charitable or educational functions and activities." MPBA wants a sales tax exemption for microchips that it sells to its members. MPBA's goal in selling these microchips is not charitable. Rather, MPBA "buy[s] microchips in volume at the lowest cost [it] possibly can to [its] breeders so that they can afford to put them in the puppies."²⁵ MPBA's goal here is to help their members' businesses be more profitable. That goal is not charitable.

MPBA is not a civic organization.

MPBA also claims that it is exempt as a civic organization or service organization under § 144.030.2(20),²⁶ which provides a sales/use tax exemption for "all sales made by or to not-for-

²⁵ Tr. 23.

²⁶ Cum. Supp. 2011.

profit civic, social, service or fraternal organizations . . . solely in their civic or charitable functions and activities[.]”

This type of tax exemption is justified only on the basis that the organization and its activities benefit a public, as distinguished from a private, interest.²⁷ In this vein, the Missouri Supreme Court has defined “civic” as:

[f]orming a component of or connected with the functioning, integration, and development of a civilized community (as a town or city) involving the common public activities and interests of the body of citizens . . . concerned with or contributory to general welfare and the betterment of life for the citizenry of a community or enhancement of its facilities; *esp*: devoted to improving health, education, safety, recreation, and morale of the general public through nonpolitical means.^[28]

The Missouri Supreme Court further stated that “For an organization to be civic in nature, its purposes and functions must be concerned with and relate to the citizenry at large. The organization must benefit the community it serves on an unrestricted basis.”²⁹

MPBA points to its role in “education.” However, the court interpreted “civic” in subdivision (20) to refer to an organization whose “purposes and functions must be concerned with and relate to the citizenry at large” and “benefit the community it serves on an unrestricted basis.”³⁰ The case most on point is *Indian Lake Property Owners v. Director of Revenue*. In that case, the court decided that a private homeowners association that provided benefits only to those owning homes in a certain development was not a civic organization because its activities were designed “to protect wholly private interests, though meritorious, confer no benefit on the general public that would render the tax exemption appropriate.”³¹ The court held that one factor

²⁷*State ex rel. Transport Manuf. & Equipment Co. v. Bates*, 224 S.W.2d 996, 1000 (Mo. banc 1949); *Indian Lake Property Owners v. Director of Revenue*, 813 S.W.2d 305, 309 (Mo. banc 1991).

²⁸*Indian Lake*, 813 S.W.2d at 308, quoting *Webster’s Third New International Dictionary* 412 (1986).

²⁹*Missouri State USBC Ass’n v. Director of Revenue*, 250 S.W.3d 362, 364 (Mo. banc 2008), quoting *Indian Lake*, 813 S.W.2d at 308.

³⁰*Id.*

³¹813 S.W.2d at 309.

to be considered was whether the organization relieved the government of a burden that it would otherwise be required to meet.³²

MPBA's activities are intended to protect a wholly private interest – the business of its members breeding pets. Its purposes and functions are not concerned with and related to the citizenry at large and do not benefit the community on an unrestricted basis. MPBA's main purpose is lobbying the state legislature, the governor, the USDA, and the Missouri Department of Agriculture for the benefit of their industry. That purpose is not bad. However, it is an issue of private concern that only tangentially affects Missouri citizens. As we have already stated, MPBA's educational activities, namely the seminar and the newsletter, are merely incidental to its private purposes. Therefore, MPBA has not met its burden of proving eligibility under § 144.030.2(20).

Summary

MPBA is not entitled to a sales/use tax exemption because it is not a charitable or civic organization.

SO ORDERED on September 12, 2013.

\s\ Nimrod T. Chapel, Jr.
NIMROD T. CHAPEL, JR.
Commissioner

³²813 S.W.2d at 309.